

DECISION



1995/ *Kristen*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-205069

DATE: November 4, 1981

MATTER OF: Delta Electric Construction Company

DIGEST:

1. Protest that procurement for replacement of airfield lighting should have been formally advertised rather than negotiated is untimely under Bid Protest Procedures, where filed with procuring activity and GAO after closing date for receipt of initial proposals.
2. Solicitation clause that advises offerors that award may be made on basis of initial offers received without further discussion does not prohibit discussions and a subsequent request for best and final offers.
3. Once one offeror is given an opportunity to revise its offered performance schedule and its price it is necessary that all other offerors in the competitive range be given an opportunity to restructure their offers.

Delta Electric Construction Company protests the award of a contract to Hallmark Electrical Contractors under request for proposals (RFP) F41800-81-R-0750 issued by the Department of the Air Force for the replacement of airfield lighting at Kelly Air Force Base, Texas. We will not consider a portion of the protest; the balance of the protest is without merit.

The RFP established September 17, 1981, as the closing date for receipt of initial proposals. Delta's price of \$628,469 was the lowest initial proposal price submitted. Delta's best and final offer corrected a deficiency and maintained the initial price of \$628,469. Hallmark, however, submitted a best and final price of \$596,101 and, in accordance with the terms of the RFP, was awarded the contract on the basis of this low price.

Delta filed a protest with the Air Force on September 23 and with our Office on October 6, contending that the Air Force lacked authority to procure the

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services on a negotiated basis. Delta argues that the procurement should have been formally advertised rather than negotiated, and that on an advertised basis, Delta should have received award as a result of its initial proposal price.

Our Bid Protest Procedures require that protests of alleged improprieties in a solicitation which are apparent prior to the closing date for submission of initial proposals be filed prior to that date. 4 C.F.R. § 21.2 (b)(1) (1981). Since the impropriety alleged by Delta is patent from the solicitation, we find that Delta's protests to the Air Force and to our Office on this issue, both filed after the September 17 closing date, are untimely. See A.R.&S. Enterprises, Inc., B-197303, July 8, 1980, 80-2 CPD 17.

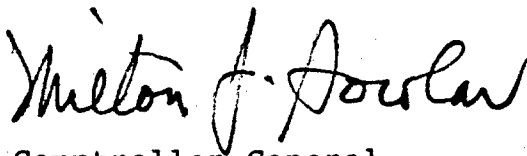
Delta also believes that it was entitled to the award since its initial proposal was low. Delta relies on the following language in the solicitation to support its contention:

"In the event * * * the Contracting Officer is satisfied that the offerors understand the work and are responsible prospective contractors and that the low proposal is reasonable * * * award may be made to the firm whose proposal is low, without further negotiation."

We do not view the foregoing as requiring award on the basis of initial proposals even if all of the stated conditions are met. That is, while an award could properly be made on the basis of the initial proposals if no discussions with offerors are considered to be necessary, it does not prohibit discussions and a subsequent request for best and final offers. In any event, from the material filed with the protest, it appears that discussions were necessary here to give Delta the opportunity to conform its proposed project completion time to that stated in the solicitation. From statements made by Government personnel at a preproposal conference, Delta had understood that an alternate completion date would be considered. Delta proposed a 360 day completion date; the RFP and all other offerors specified 217 days. Delta did agree to the 217 day period in its revised offer but did not alter its price.

Hence, once Delta was given the opportunity to revise its performance schedule and its price, it was necessary that all other offerors be given the opportunity to restructure their offers. See Cohu, Inc., 57 Comp. Gen. 759 (1978), 78-2 CPD 175. It is a general rule in Federal procurements that offerors have a right to change their proposals in any manner they see fit so long as negotiations remain open. University of New Orleans, 56 Comp. Gen. 958 (1977), 77-2 CPD 201.

The protest is dismissed in part and summarily denied in part.

for 
Comptroller General
of the United States